

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON

ARTHUR BALLINGER, IV,

Plaintiff

v.

Civil Action No.: 2:08-917

DAVID BALLARD,
Warden, Mount Olive
Correctional Complex,

Defendant

MEMORANDUM OPINION AND ORDER

This action was previously referred to Mary E. Stanley, United States Magistrate Judge, who has submitted her Proposed Findings and Recommendation pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B).

The court has reviewed the Proposed Findings and Recommendation entered by the magistrate judge on August 8, 2008. The magistrate judge recommends dismissal of plaintiff's complaint for failure to state a claim upon which relief could be granted. The magistrate judge further recommends that plaintiff's Application to Proceed Without Prepayment of Fees and Costs be denied. The plaintiff has not objected to the Proposed Findings and Recommendation. The court concludes the recommended disposition is correct.


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Accordingly, it is ORDERED that:

1. The Proposed Findings and Recommendation be, and it hereby is, adopted by the court;
2. Plaintiff's Application to Proceed Without Prepayment of Fees and Costs be, and it hereby is, denied; and
3. This action be, and it hereby is, dismissed under 28 U.S.C. § 1915A(b) (1).

The Clerk is directed to forward copies of this written opinion and order to the pro se plaintiff, all counsel of record, and the United States Magistrate Judge.

DATED: October 6, 2008


John T. Copenhaver, Jr.
United States District Judge